

# UNOFFICIAL COPY



Doc#: 0525555008 Fee: \$46.00

Eugene "Gene" Moore RHSP Fee:\$10.00

Cook County Recorder of Deeds

Date: 09/12/2005 03:44 PM Pg: 1 of 12

Property of Cook County Clerk's Office

ABOVE SPACE FOR RECORDER'S USE ONLY

This instrument prepared by,  
and after recording return to:

Thomas R. Palmer, Esq.  
MELTZER, PURTILL & STELLE  
1515 East Woodfield Rd.  
Second Floor  
Schaumburg, IL 60173

Real Estate Tax Index No.:  
13-16-230-031-000

Address:  
4401-13 N. LaCrosse Avenue  
Chicago, Cook County, Illinois 60630

## MORTGAGE AND SECURITY AGREEMENT

<sup>31st</sup> THIS MORTGAGE AND SECURITY AGREEMENT ("Mortgage") is made as of the day of August, 2005, by NORTH STAR TRUST COMPANY, not personally, but as successor trustee to BANCO POPULAR, ILLINOIS, as Trustee under a Trust Agreement dated December 29, 1997, and known as Trust No. 26597 ("Trustee"), JACK BATAOEL, individually, and JOANN BATAOEL, individually, jointly (collectively, "Beneficiary") (Trustee and Beneficiary are hereinafter individually and collectively referred to as "Mortgagor") to and for the benefit of JOHN J. SHARKEY ("Mortgagee").

WITNESSETH:

WHEREAS, as security for the payment of an indebtedness in the amount of ONE HUNDRED THIRTY-FIVE THOUSAND AND NO/100 DOLLARS (\$135,000.00), to be paid

# UNOFFICIAL COPY

with interest thereon evidenced by a certain Demand Note bearing even date herewith and any amendments, modifications, extensions, renewals or replacements thereof (herein referred to as the “Note”), Mortgagor hereby mortgages, conveys, transfers and grants unto Mortgagee, his successors and assigns, the real estate and all improvements thereon situated in the County of Cook, State of Illinois (hereinafter referred to as the “Mortgaged Property” or “Premises”) legally described in **Exhibit A** attached hereto and by this reference made a part hereof (the Note and this Mortgage shall be referred to as the “Loan Documents”); and

TOGETHER, with all buildings and improvements now or hereafter thereto belonging upon the Mortgaged Property or any part thereof, and all fixtures now or hereafter installed, including, but not limited to, all lighting, cooling, ventilating, air conditioning, plumbing, sprinklers, communications, electrical systems and the equipment pertaining thereto together with any rents, issues, profits and leases of the Mortgaged Property.

PROVIDED, HOWEVER, as to any of the property aforesaid which does not so form a part and parcel of the real estate or does not constitute a “fixture” (as defined in the Uniform Commercial Code of Illinois) (the “Code”), this Mortgage is hereby deemed to also be a Security Agreement under the Code for purposes of granting a security interest in such property, which Mortgagor hereby grants to Mortgagee, as Secured Party (as defined in the Code), as more particularly provided in Article XIV of this Mortgage.

TO HAVE AND HOLD the Mortgaged Property unto said Mortgagee, his successors and assigns, forever, for the purpose and uses set forth herein.

## I. MORTGAGOR COVENANTS

Mortgagor represents to and covenants with Mortgagee that Mortgagor holds fee simple title to the Mortgaged Property, free and clear of any and all liens and encumbrances subject only to those mortgage and other security interests previously granted to ABN AMRO Mortgage Group, Inc. in connection with a loan in the principal amount of \$627,000 on February 4, 2003, and previously granted to Lasalle Bank, NA, in connection with a loan in the principal amount of \$230,000 on August 11, 2004 (collectively, the “Senior Lenders”), and, subject only to the Senior Lenders’ interests, Mortgagor has the power and authority to mortgage the Mortgaged Property.

The Mortgagor shall maintain or cause to be maintained the Mortgaged Property in good repair, working order and condition and make or cause to be made, when necessary, all repairs, renewals and replacements, structural, non-structural, exterior, interior, ordinary and extraordinary. The Mortgagor shall refrain from and shall not permit the commission of waste in or about the Mortgaged Property and shall not remove, demolish, alter, change or add to the structural character of any improvement at any time erected on the Mortgaged Property without the prior written consent of Mortgagee, except as hereinafter otherwise provided. Mortgagor covenants and agrees that in the ownership, operation and management of the Premises, Mortgagor will observe and comply with all applicable federal, state and local statutes, ordinances, regulations, orders and restrictions. Mortgagee shall have the right at any time, and from time to time, to enter the Premises for the purpose of inspecting the same.

# UNOFFICIAL COPY

## II. INSURANCE

Mortgagor shall at all times keep the Mortgaged Property, including, but not limited to, all buildings, improvements, fixtures and articles or personal property now or hereafter situated on the Premises insured against loss or damage by fire and such other hazards as may reasonably be required by Mortgagee, including, but not limited to: all-risk fire and extended coverage insurance, with vandalism and malicious mischief endorsements, for the full replacement value of the Premises, in an agreed amount, with inflation guard endorsement; and such other insurance as Mortgagee may from time to time reasonably require. Mortgagor also shall at all times maintain comprehensive public liability and property damage covering the Premises, with such limits for personal injury, death and property damage as Mortgagee may reasonably require. All policies of insurance to be furnished hereunder shall be in forms, companies, amounts and deductibles reasonably satisfactory to Mortgagee, with mortgage clauses attached to all policies in favor of and in form satisfactory to Mortgagee, including, but not limited to, a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without at least ten (10) days prior written notice to Mortgagee. Mortgagor shall deliver all policies, including, but not limited to, additional and renewal policies, to Mortgagee, and, in the case of insurance about to expire, shall deliver renewal policies not less than ten (10) days prior to their respective dates of expiration.

In the event of loss, Mortgagor will give immediate notice by mail to Mortgagee, who may make proof of loss if not made promptly by Mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Mortgagee instead of to Mortgagor and Mortgagee jointly and the insurance proceeds, or any part thereof, shall be applied by Mortgagee to the restoration or repair of the property damaged. In the event of foreclosure of this Mortgage, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale.

If the Mortgagor fails to keep the Mortgaged Property insured in accordance with the requirements of the Loan Documents, Mortgagee shall have the right, at his option, to provide for such insurance and pay the premiums thereof, and any amounts paid thereon by the Mortgagee shall bear interest at the Default Rate (as herein defined) from the date of payment.

## III. PAYMENT OF TAXES AND ASSESSMENTS

Mortgagor shall pay, before any penalty or interest attaches, all general taxes, special taxes, special assessments, water charges, sewer service charges, and all other liens or charges levied or assessed against the Premises of any nature whatsoever when due, and shall furnish to Mortgagee duplicate receipts of payment therefor. If any special assessment is permitted by applicable law to be paid in installments, Mortgagor shall have the right to pay such assessment in installments, so long as all such installments are paid prior to the due date thereof. With respect to any tax or assessment which Mortgagor may desire to contest, Mortgagor shall pay such tax or assessment in full under protest in order to prevent a default under this Mortgage on account thereof.

# UNOFFICIAL COPY

## IV. PROTECTION OF MORTGAGEE'S SECURITY

If default be made in the payment of any of the aforesaid taxes or assessments, or in making repairs or replacements, or in procuring and maintaining insurance and paying the premiums therefor, or in keeping or performing any other covenant of Mortgagor herein, Mortgagee may, at its option and without any obligation on its part so to do, pay said taxes and assessments, make such repairs and replacements, effect such insurance, pay such premiums, and perform any other covenant of Mortgagor herein. All amounts expended by Mortgagee hereunder shall be secured hereby and shall be due and payable by Mortgagor to Mortgagee forthwith on demand with interest thereon at the rate applicable under the Note from the date of such expenditure.

## V. REIMBURSEMENT FOR MORTGAGEE LEGAL EXPENSE

As a condition precedent to Mortgagee entering into this loan transaction, Beneficiary shall pay \$500.00 toward the attorneys' fees incurred by Mortgagee in connection with the preparation and negotiation of the Loan Documents.

In the event that Mortgagee is made a party to any suit or proceedings by reason of the interest of Mortgagee in the Premises, Mortgagor shall reimburse Mortgagee for all costs and expenses, including, but not limited to, reasonable attorneys' fees, incurred by Mortgagee in connection therewith, whether or not said proceeding or suit ever goes to trial. All amounts incurred by Mortgagee hereunder shall be secured hereby and shall be due and payable by Mortgagor to Mortgagee forthwith on demand with interest thereon at the rate applicable under the Note from the date of such expenditure.

## VI. CONDEMNATION

If all or any part of the Mortgaged Property is damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid indebtedness secured by this instrument, is hereby assigned to Mortgagee, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Mortgagor, and the same shall be paid forthwith to Mortgagee, who shall release any such award or monies so received or apply the same in whole or in part, after the payment of all expenses, including, but not limited to, costs and reasonable attorneys' fees, to the restoration or repair of the property damaged, if the property can be restored or repaired to constitute a complete architectural unit. In the event the said property cannot be restored or repaired to constitute a complete architectural unit, then such award or monies received after the payment of expenses of Mortgagee as aforesaid shall be applied on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable. Furthermore, in the event such award or monies so received shall exceed the cost of restoration or repair of the property and expenses of Mortgagee as aforesaid, then such excess monies shall be applied on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable.

# UNOFFICIAL COPY

## VII. EVENTS OF DEFAULT

Each of the following shall constitute an "Event of Default " for purposes of this Mortgage:

(A) Failure to make prompt payment when due of any payment of principal or interest under the Note.

(B) Failure to promptly perform or observe any other covenant, promise, term or agreement contained in the Mortgage, the Note or any other document executed in connection with this loan transaction.

(C) Any sale, agreement, transfer, lease, agreement to transfer, grant of security interest, mortgage, or other encumbrance or alienation of any interest in the Mortgaged Property without the prior written consent of Mortgagee.

(D) Failure to make prompt payment, when due, of any payment of principal or interest under any agreement, loan documents, notes or instrument now or hereafter delivered by Mortgagor to Mortgagee.

(E) The commencement of any petition in bankruptcy, whether voluntary or involuntary by or against Mortgagor, or if Mortgagor is adjudicated bankrupt or insolvent or files any petition or answer seeking restoration, assignment, composition, liquidation or similar relief under the present or any future Federal or state law or seeks or covenants or acquiesces in the appointment of any trustee, receiver or similar officer of the Mortgagor, regarding the Mortgaged Property.

## VIII. ACCELERATION AND DEFAULT RATE

If an Event of Default occurs, Mortgagee may, at its option, declare the whole of the indebtedness hereby secured to be immediately due and payable without notice to the Mortgagor. Then, or at any time thereafter, at the sole option of the Mortgagee, the principal balance and accrued interest on the Note shall become immediately due and payable, and any other sums secured hereby shall become immediately due and payable. All sums coming due and payable hereunder shall bear interest, after acceleration, at the Default Rate, which shall mean the interest rate stated in the Note plus three (3) percentage points per annum and shall constitute additional indebtedness secured by this Mortgage. After any such Event of Default, Mortgagee may institute or cause to be instituted, proceedings for the realization of its rights under this Mortgage or any other Loan Document.

## IX. RIGHTS, POWERS AND REMEDIES OF MORTGAGEE

When the indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee may at its election:

# UNOFFICIAL COPY

(A) Foreclose this Mortgage by legal action, as provided under Illinois law and this paragraph shall further authorize a power of sale as provided by said statutes.

(B) Enter upon and take possession of the Mortgaged Property with the irrevocable consent of Mortgagor as granted and evidenced by execution of this Mortgage. As Mortgagee in possession, Mortgagee may hold, operate, manage and control the Mortgaged Property, either personally or by his agents. The Mortgagee may collect rents and lease the Mortgaged Property, cancel or modify existing leases, and generally exercise all powers and rights customarily incident to ownership. Mortgagee may pay out of any rents collected, taxes, insurance, conversions, fees and any expenses attributable to the Mortgaged Property.

(C) Upon, or at any time after the filing of a complaint or petition to foreclose this Mortgage, the Mortgagee may apply to the court for appointment of a receiver of the Mortgaged Property. Such receiver shall have the power to collect the rents, issues and profits of the Mortgaged Property during the pendency of the foreclosure suit up to and after any sale of the Mortgaged Property. The court may authorize the receiver to apply net income from management and control of the Mortgaged Property in whole or in part to the indebtedness secured hereby or to any tax or special assessment which may be or become superior to the lien hereof.

## X. SECURITY AGREEMENT AND FINANCING STATEMENT

Mortgagor and Mortgagee agree: (a) that this Mortgage shall constitute a Security Agreement within the meaning of Sections 9-502 and 9-509 of the Code with respect to any property included in the definition herein of the word "Premises," which property may not be deemed to form a part of the real estate described in **Exhibit A** attached hereto or may not constitute a "fixture" (within the meaning of the Code), and all replacements of such property, substitutions for such property, additions to such property, books and records relating to the Premises and operation thereof and the proceeds thereof (collectively, the "Collateral"); and (b) that a security interest in and to the Collateral is hereby granted to the Mortgagee; all to secure payment of the indebtedness hereby secured and to secure performance by the Mortgagor of the terms, covenants and provisions hereof.

Upon the occurrence of any Event of Default hereunder, Mortgagee, pursuant to the appropriate provisions of the Code, shall have an option to proceed with respect to both the real property and the Collateral in accordance with its rights, powers and remedies with respect to the real property, in which event the default provisions of the Code shall not apply. Mortgagee and Mortgagor agree that if Mortgagee shall elect to proceed with respect to the Collateral separately from the real property, ten (10) days notice of the sale of the Collateral shall be reasonable notice. The expenses of retaking, holding, preparing for sale, selling and the like incurred by Mortgagee shall include, but not be limited to, reasonable attorneys' fees and legal expenses incurred by Mortgagee. Mortgagor agrees that, without the written consent of Mortgagee, Mortgagor will not remove or permit to be removed from the Premises any of the Collateral except that so long as Mortgagor is not in default hereunder, Mortgagor shall be permitted to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Premises, but only upon replacing the same or

# UNOFFICIAL COPY

substituting for the same other Collateral at least equal in value and utility to the initial value and utility of that disposed of and in such a manner that said replacement or substituted Collateral shall be subject to the security interest created hereby and that the security interest of Mortgagee shall be perfected and first in priority, it being expressly understood and agreed that all replacements, substitutions and additions to the Collateral shall be and become immediately subject to the security interest of this Mortgage and covered hereby.

## XI. NOTICES

Any notice, demand, requests or other communication desired to be given or required pursuant to the terms hereof shall be in writing and shall be delivered by personal service or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows or to such other address as the parties hereto may designate in writing from time to time:

Mortgagor: North Star Trust Company, as Trustee  
Trust No. 26597  
*5383 West Belmont Avenue, Lower Level*  
*River Grove, Illinois 60171*

Jack Bataoel  
Joann Bataoel  
5023 North Merrimac Avenue  
Chicago, Illinois 60630

Mortgagee: John J. Sharkey  
1028 Rand Road  
Villa Park, Illinois 60181

## XII. SUCCESSORS AND ASSIGNS

Subject to the restrictions against transfer in the Note and in this Mortgage, all of the covenants and conditions hereof shall run with the land and shall be binding upon and inure to the benefit of the successors and assigns of Mortgagor and Mortgagee respectively, and all persons claiming through or under them. Any reference herein to Mortgagee shall include, but not be limited to, the successors and assigns of Mortgagee and any holder or holders, from time to time, of the Note. The Mortgagor shall not assign their interest without the prior written consent of the Mortgagee.

## XIII. REMEDIES CUMULATIVE

The rights and remedies herein provided are cumulative and Mortgagee may recover judgment on the Note, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security or any right or remedy afforded by this Mortgage and no enumeration of special rights or powers by any provision of this Mortgage shall be construed to limit any grant of general

# UNOFFICIAL COPY

rights or powers, or to take away or limit any and all rights granted to or vested in the Mortgagee by virtue of the laws of the State of Illinois.

## XIV. INCORPORATION OF UNIFORM COMMERCIAL CODE

To the extent that this instrument may operate as a security agreement under the Code, Mortgagee shall have all rights and remedies conferred therein for the benefit of a secured party as said term is defined in the Code.

## XV. COMPLIANCE WITH ILLINOIS MORTGAGE FORECLOSURE LAW

(A) In the event that any provision of this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law 735 ILCS 5/15-1101, et. seq. (1993) (herein called the "Act"), the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

(B) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

(C) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed as of the first date appearing above.

Trustee's Exoneration Rider Attached Hereto And Made A Part Hereof  
NORTH STAR TRUST COMPANY, not personally, but as successor trustee to BANCO POPULAR, ILLINOIS, as Trustee under Trust Agreement dated December 29, 1997, and known as Trust No. 26597

By: 

Its: Trust Officer

Jack Bataoel  
JACK BATAOEL

Joann Bataoel  
JOANN BATAOEL





# UNOFFICIAL COPY

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF Cook        )

I, Ann Croll, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that JOANN BATAOEL, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed, sealed and delivered said instrument as her own free and voluntary act for the uses and purposes therein set forth.

GIVEN UNDER my hand and notarial seal this 31 day of August, 2005.

Ann P. Croll



[SEAL]

NOTARY PUBLIC

My commission expires: 3-18-09

# UNOFFICIAL COPY

**EXHIBIT A  
TO  
MORTGAGE AND SECURITY AGREEMENT  
DATED AUGUST 31<sup>st</sup>, 2005**

COMMONLY KNOWN AS: 4401-13 N. LaCrosse Avenue, Chicago, Illinois 60630

PIN NUMBER: 13-16-230-031-000

LEGAL DESCRIPTION:

LOTS 149 AND 150 IN CREIGHTON'S ADDITION TO CHICAGO IN THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## Land Trust Mortgage Exoneration Rider

This MORTGAGE is executed by North Star Trust Company, not personally but as trustee as aforesaid in the exercise of the power and authority conferred upon vested in it as such Trustee (and said North Star Trust Company, hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein or in said Note contained shall be construed as creating any liability on the said Trustee or on said North Star Trust Company personally to pay the said Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant either expressed or implied herein contained, or on account of any warranty or indemnification made hereunder, all such liability, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right or security hereunder, and that so far as the trustee and its successors and said North Star Trust Company personally are concerned, the legal holder or holders of said Note and the owner or owners of any indebtedness accruing hereunder shall look solely to the premises hereby conveyed for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in said Note provided or by action to enforce the personal liability of the guarantor, if any.

Deputy Cook County Clerk's Office